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No. 78-1665

In the Supreme Court of the United States

OCTOBER TERM, 1978

JERSEY CENTRAL POWER & LIGHT COMPANY, PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE FEDERAL ENERGY REGULATORY COMMISSION IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 589 F. 2d 142. The orders of the Commission (Pet. App. D-H) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 8, 1978. An order denying a petition for rehearing was entered on February 2, 1979 (Pet. App. B). The petition for a writ of certiorari was filed on May 3, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Federal Energy Regulatory Commission[1] properly rejected portions of a wholesale electric tariff proposing to phase-in an increase in the factor representing the base period cost of fuel in the tariff's automatic fuel adjustment clause.

STATUTE INVOLVED

Pertinent provisions of Part II of the Federal Power Act, ch. 687, 49 Stat. 847-854, 16 U.S.C. 824-824h, are set forth in Appendix I of the petition (Pet. App. 43a-46a).

STATEMENT

1. Most rates for electric service to a customer consist of two elements: a "demand charge" to recover the relatively fixed, capacity-related costs of supplying power; and an "energy charge", to recover the variable costs of supplying electric energy— primarily the cost of fuel used to produce the kilowatt-hours supplied.[2] The estimated average cost of fuel at the time the rate is established— known as the base period cost of fuel—is recovered in the energy rate. Actual fuel costs, however, vary from this fixed base period cost.

The Commission has long allowed wholesale electric utilities to include in their tariffs automatic fuel cost adjustment clauses to reflect the utilities' changing fuel

[1]The FERC succeeded to the relevant responsibilities of the former Federal Power Commission over wholesale electric rates effective October 1, 1978. Section 402(a)(1)(B), Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 584 (to be codified as 42 U.S.C. 7172(a)(1)(B)). Hereinafter, "Commission" refers to the FERC or the FPC depending on whether the events described occurred before or after October 1, 1978.

[2]See *Public Service Company of New Hampshire* v. *FERC*, No. 77-1592 (D.C. Cir. May 3, 1979).

costs.[3] 18 C.F.R. 35.14. Such clauses relieve utilities from the burden of continually filing rate changes as fuel costs fluctuate. The regulation permits utilities to adopt formulas for calculating the difference between the cost of fuel in a base period and the "current" cost of fuel. Under such a formula, a utility may recover any excess of current costs over base period costs as an added charge for the billing period. Thus, the energy rate's recovery of the base period fuel cost, and the fuel adjustment clause's recovery of actual costs in excess of the base, operate, in a properly designed tariff, to collect all fuel costs actually incurred by the utility in supplying power during a given month.

2. Petitioner, Jersey Central Power & Light Company, is a public utility selling electricity at wholesale in interstate commerce under Section 201(e), Part II, Federal Power Act, ch. 687, 49 Stat. 848, 16 U.S.C. 824(e).

In 1973, Jersey Central filed a tariff with a fuel adjustment clause (App., *infra*, 1a) that became effective December 2, 1973 (R. 305).[3] The clause provided that a fuel cost adjustment, determined "to the nearest one-thousandth of 1 mill per kilowatt-hour in accordance with the formula set forth below, shall be applied to all kilowatt-hours supplied during the billing month" (App., *infra*, 1a). The formula listed various factors, including a predetermined base period fuel cost per kilowatt-hour (as modified)[4] of 5.659 mills, and factors for actual fuel costs, kilowatt-hours generated, and sales thereof in the

[3]"R." refers to the certified record in the court of appeals.

[4]The originally effective clause (App., *infra*, 1a) applied only to fossil fuel. It was modified, effective August 4, 1975, to reflect the cost of nuclear fuel as well. FPC Electric Tariff, Jersey Central Power & Light Company, Original Volume No. 1, Second Revised Tariff Sheet No. 15.

"current" period (App., *infra*, 1a). It also provided that the latter three factors were "to be determined as the three month totals for the period ending with the second calendar month preceding that billing month" (*id.* at 2a). Thus, for example, under the formula, bills for kilowatt-hours supplied in June contained an adjustment based on fuel costs actually incurred in a prior period: January, February and March.

In July 1976, Jersey Central filed a tariff with the Commission proposing to raise the base period cost of fuel from the amount set forth in its 1973 tariff to a new level reflecting 1976 costs (14.433 mills per kwh). The new tariff became effective on September 27, 1976, subject to refund. Jersey Central also proposed to change its adjustment clause in two respects (App., *infra*, 3a): by commensurately raising the base period fuel cost factor used in the adjustment formula; and by phasing-in this increase in a series of steps over a five-month period after the new clause became effective.[5] The effect of the phase-in mechanism would have been to permit Jersey Central, in the first four months of the new tariff, to charge rates reflecting costs higher than those that would be otherwise attributable to those months. It is the lawfulness of the phase-in mechanism that is at issue in this case.

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[5]The phase-in was expressed as follows (App., *infra*, 4a):

$\frac{Fb}{Sb}$ = Base fuel cost:		mills
	For the first month of effectiveness of this clause	5.659
	For the second month of effectiveness of this clause	5.659
	For the third month of effectiveness of this clause	8.584
	For the fourth month of effectiveness of this clause	11.508
	All succeeding months	14.433

Jersey Central claimed that the phase-in mechanism was calculated and designed to permit it to recover fuel costs actually incurred in July and August 1976. It contended that, without the phase-in mechanism, recovery of those costs would be lost because they could not be recovered under the 1973 tariff (which would apply to the billing for power delivered in those months) in view of the provision in the adjustment clause of the 1973 tariff providing that cost factors in the adjustment formula were to be based on costs "for the period ending with the second calendar month preceding the billing month" (*i.e.*, May and June). It analogized the phase-in mechanism to a surcharge proposal that had been filed with the Commission by the Public Service Company of New Hampshire (FPC Docket No. ER 76-285). Jersey Central argued that this surcharge was permissible because the 1973 fuel adjustment clause was intended to defer the recovery of the costs incurred in the current billing month to later months, and claimed that the phase-in device simply permitted the recovery of deferred costs that would have been recoverable under the 1973 tariff (R. 566).

Jersey Central's wholesale customers protested that the utility was mischaracterizing its prior fuel clause. In their view, that clause had never recovered actual fuel costs on a deferred basis and was not designed to do so, but had simply used past fuel costs as "test period" costs that reasonably approximated current fuel costs for purposes of calculating the fuel adjustment charge. In other words, in the customers' view, the 1973 tariff was designed to recover costs of the current billing month in the charges for the power delivered in that month. Thus, the costs for July and August 1976 were recovered in the billings for those months, which were governed by the 1973 tariff; they could not also be recovered in a subsequent tariff. To do so would constitute prohibited retroactive ratemaking.

even if, as Jersey Central claimed, the design of the 1973 tariff fell short of recovering the full actual costs of the period to which that tariff applied. Moreover, the Jersey Central customers contended that the phase-in mechanism operated to recover more than the 1973 fuel clause (or the 1976 fuel clause without the phase-in) would have recovered in any event, and thus would constitute a patent overcollection that would be unjust and unreasonable (R. 421-422, 438-443).[6]

3. Before a hearing on Jersey Central's phase-in proposal was held,[7] the Commission issued Opinion No. 790, disapproving the surcharge proposal by the Public

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[6]The customers' overcollection claim was based on the fact that during the first four months of the phase-in period, the base period fuel cost recovered by the energy charge was higher then the base period factor used in the adjustment formula to calculate the difference between current and base period costs.

As we have stated, under both tariffs, the energy charge [EC] recovers the base period fuel cost (Fb) plus (or minus, in periods of declining fuel costs) an adjustment (A). In periods of rising fuel costs, A equals current fuel costs (Fc) minus Fb. Fb under the old tariff was approximately 5 mills per kilowatt. Fc for September 1976 was approximately 15 mills. Fb under the new tariff was also approximately 15 mills, except that under the phase-in for September 1976, it was to be 5 mills.

As applied to a typical wholesale customer, if the old tariff had remained in force for September 1976, the energy charge for that month would have recovered 5 mills plus an adjustment(15 minus 5 mills), or 15 mills—*i.e.*, the current fuel cost for that month. Under the new tariff and its phase-in mechanism, the energy charge for September 1976 would have recovered 15 mills plus an adjustment (15 minus 5 mills), or 25 mills—a charge far in excess of the costs for that month and not justified by any need to recover that which would have been recovered under the old tariff in that month (see R. 438-443).

[7]The proposed phase-in was suspended and set for hearing by Commission order issued August 26, 1977 in Docket No. ER76-813 (Pet. App. 11a-14a). It became effective, subject to refund, under Section 205(e) of the Federal Power Act, 16 U.S.C. 824d(e).

Service Company of New Hampshire (PSNH) which Jersey Central had claimed was similar to its own and on which it had relied.[8] The Commission found that PSNH's prior fuel clause was not designed to collect past fuel costs on a deferred basis; rather, the clause used the fuel costs incurred in the designated three month period preceding the billing month as "test period" costs to determine "current" fuel costs and adjustment charges. Therefore, it held, there were no "deferred" fuel costs still owed under the old fuel clause that could properly be collected by means of the new surcharge. The Commission concluded that allowing the surcharge would amount to authorizing recovery of prior costs not provided for in the old fuel clause. This would have constituted retroactive ratemaking which, the Commission held, is not authorized by the Federal Power Act.

The Commission found that Jersey Central's old fuel clause, like that of PSNH, used past months' fuel costs as "test period" costs for computing current fuel adjustment charges. On the basis of Opinion No. 790, therefore, the Commission summarily rejected Jersey Central's phase-in proposal (Pet. App. 22a-26a, 27a-30a). The Commission did not reach the further contention of Jersey Central's customers that the operation of the tariffs without the phase-in provision would not in fact prevent Jersey Central from recovering all its costs, and that the phase-in provision would simply result in a patent overcollection.

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[8]*Public Service Company of New Hampshire*, 19 P.U.R 4th 210 (FPC 1977), rehearing denied, Opinion No. 790-A, Docket No. ER76-285 (May 20, 1977), aff'd, *Public Service Company of New Hampshire* v. *FERC*, No. 77-1592 (D.C. Cir. May 3, 1979), rehearing denied, July 3, 1979.

4. The court of appeals affirmed (Pet. App. A). It held that the Commission had properly construed the prior tariff as simply providing a method to calculate a current charge in the billing month on the basis of a specific formula applied to kilowatt-hours delivered in that month. That the formula was based on costs in a preceding period did not amount to a provision for recovery of "deferred" fuel costs actually incurred (Pet. App. 6a-7a). The court noted that the Fourth Circuit in *Virginia Electric and Power Co.* v. *FERC*, 580 F. 2d 710 (1978), had taken the same approach, but that the First Circuit in *Maine Public Service Co.* v. *FPC*, 579 F. 2d 659 (1978), had remanded on the ground the Commission had misapplied the principles of *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246 (1951).

The court distinguished *Maine Public Service*, stating that "[r]egardless of whether *Montana-Dakota* forecloses the phase-in here, it appears to us that the Commission is on solid ground in concluding that a reasonable interpretation of the tariff compels the result it reached". (Pet. App. 8a).

ARGUMENT

The decision of the Commission and the court of appeals presents a narrow issue arising from the design of the particular fuel cost adjustment clause involved. Although one circuit has remanded the Commission's rejection of a surcharge designed to recover costs incurred under a prior tariff (see pages 12-14, *infra*), the question turns in each case upon the terms and intent of particular tariff provisions. Moreover, it appears unlikely that the issue presented here will recur in a form requiring resolution of the conflict by this Court. Further review in this case is therefore unwarranted.

1. The Commission has recently considered a series of cases concerning changes by wholesale utilities in automatic fuel cost adjustment clauses; each of these cases has been reviewed by the courts of appeals.[9] They involve disputes over the transition from an old provision to a new one. In each case, the utility proposed to collect, under the new clause, costs incurred while the old clause was in effect, which the utility claimed would otherwise not be collectable because the old clause was superseded. The Commission ruled that utilities can charge only rates currently on file with it, and cannot retroactively recover costs not covered by those tariffs. The issue in each case has turned, therefore, on the language of the superseded tariff provisions involved.

In this case, as noted (page 5, *supra*) Jersey Central's phase-in mechanism was designed to collect under the new tariff fuel costs incurred in July and August 1976, when the old tariff was in effect. Jersey Central claimed that this was necessary because those costs would otherwise be lost in view of the two-month lag in the old adjustment clause and in view of the transition to the new tariff (but see page 6 & note 6, *supra*). Jersey Central claimed that this was permissible because, it argued, the old adjustment clause was designed simply to defer the recovery of costs incurred in a given month until two months later.

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[9] *Public Service Company of New Hampshire*, FPC Docket No. ER76-285; *Pennsylvania Electric Company*, No. ER76-607; *Metropolitan Edison Company*, Nos. ER76-209 and ER76-492, aff'd. *Public Service Company of New Hampshire* v. *FERC*, No. 77-1592 (D.C. Cir. May 3, 1979), rehearing denied, July 3, 1979; *Appalachian Power Company*, Nos. ER77-325 and ER77-426, remanded. *Public Service Company of New Hampshire*, *supra*; *Virginia Electric and Power Co.*, No. ER76-415, aff'd, *Virginia Electric and Power Co.* v. *FERC*, 580 F. 2d 710 (4th Cir. 1978); *Maine Public Service Co.*, No. E-8264, remanded, *Maine Public Service Co.* v. *FPC*, 579 F. 2d 659 (1st Cir. 1978); and the instant case, *Jersey Central Power & Light Company*, No. ER76-813, aff'd, *Jersey Central Power & Light Company* v. *FERC*, 589 F. 2d 142 (3d Cir. 1978).

The issue thus considered by the Commission and the court of appeals was whether the 1973 clause, which had been designed by Jersey Central itself,[10] provided for recovery on a deferred basis of fuel costs actually incurred; or simply provided a formula, based on past costs in a specified period, that determined the fuel adjustment applicable to kilowatt-hours supplied during the current billing month.

The Commission expressly held "that Jersey Central intended its fuel adjustment clause to recover costs for a given month based on costs incurred during a prior test period" (Pet. App. 29a).[11] The court of appeals agreed that the tariff compelled the result the Commission reached (Pet. App. 8a).[12] As the court explained (Pet. App. 7a):

> We think it significant that the tariff stated that the adjustment should be determined "in accordance with the formula set forth," an approach inconsistent with the company's argument that an assessment of actual cost was intended. The tariff provided unmistakably that the charge in the billable month was to be computed on the basis of a specific formula. There was no provision for a charge other than the monthly rate computed under the formula and

[10]As the court of appeals noted, "any doubt as to the meaning [of the tariff] should be resolved against the filing utility. *Cf. United States* v. *Missouri-Kansas-Texas Railroad*, 194 F. 2d 777 (5th Cir. 1952). *See also Great Northern Railway* v. *Merchants Elevator Co.*, 259 U.S. 285, 290-91" (1922) (Pet. App. 6a).

[11]The Commission found strong evidence of this intent in Jersey Central's initiation of the clause in 1973. It "collected for the first month, based on cost incurred during the prior three month period, before the fuel clause took effect" (Pet. App. 29a).

[12]Petitioner's claim (Pet. 9-10) that the court of appeals supplied a rationale not adopted by the Commission is thus patently incorrect.

> applied to the kilowatt-hours in the billable month. The fact that the formula was based on costs in a preceding period did not change its effect of providing a method to calculate a current charge rather than to exact a precise recovery of past expenses. Such a formula could as well have been based, for example, on some past wholesale price index or similar factor rather than actual cost incurred, and yet be the basis for a "current" charge.

2. Although the court of appeals' decision turns on the language of Jersey Central's 1973 tariff, its decision affirming the Commission's rejection of the phase-in proposal in the superseding fuel clause necessarily rests on the rule against retroactive ratemaking, and the related doctrine that a utility may charge only those rates set forth in tariffs on file with the Commission. The underlying rationale of the Commission's decision was that if a utility designs its tariffs so as to recover costs for a given period, but its tariff fails fully to recover the costs actually incurred, it may not retroactively recoup those costs in a subsequent tariff.[13] The principle is well established under the Federal Power Act and its analogue, the Natural Gas Act. See, *e.g.*, *FPC* v. *Tennessee Gas Co.*, 371 U.S. 145, 152-153 (1962); *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 618 (1944); cf. *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246, 254 (1951). See *Public Service Company of New*

[13]*Public Service Company of New Hampshire, supra*, note 8.

Hampshire v. *FERC*, No. 77-1592 (May 3, 1979), slip op. 26-28.[14]

As applied to transitions from one fuel adjustment clause to another, this rationale involves a conflict among the circuits. In *Maine Public Service Co.* v. *FPC*, *supra*, the First Circuit held that the filed-rate doctrine and the rule against retroactive ratemaking did not of themselves prevent recovery through a current fuel cost adjustment clause of the fuel costs actually incurred before the current clause became effective. It described such clauses as "unique animals that are not not easily assimilated to classical rate-making principles" (579 F. 2d at 668). It therefore remanded a Commission decision rejecting, as retroactive ratemaking, a utility's fuel cost surcharge; the court directed the Commission to determine whether the surcharge was just and reasonable without regard to supposed restrictions against retroactive rates.[15]

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[14]As the Court observed in *FPC* v. *Sierra-Pacific Power Co.*, 350 U.S. 348, 355 (1956):

> [W]hile it may be that the Commission may not normally *impose* upon a public utility a rate which would produce less than a fair return, it does not follow that the public utility may not itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its improvident bargain.

[15]*Maine Public Service Co.*, *supra*, involved a utility's transition from a fuel adjustment clause based on the average of fuel costs over the twelve months preceding the billing month to a clause recovering fuel costs incurred in the previous month. Due to rapidly rising fuel prices, the old "average" formula allegedly failed to recover fuel costs for the twelve-month period actually preceding the change-over. The utility proposed a surcharge to be imposed during the next twelve months which was intended to recover the difference between actual fuel costs incurred in the previous period, and the fuel costs billed under the old formula. The Commission held that the surcharge constituted retroactive ratemaking. See note 9, *supra*, page 9.

The Fourth Circuit's decision in *Virginia Electric and Power Co.* v. *FERC*, 580 F. 2d 710 (1978), and the District of Columbia Circuit's recent decision in *Public Service Company of New Hampshire* v. *FERC*, *supra*, are to the contrary.[16]

The conflict, however, does not appear to be significant in the context of these cases. All of the decisions turn on problems of transition from one form of fuel cost adjustment clause to another and on the language and intent of particular tariff provisions. The First Circuit has not generally questioned the prohibition against retroactive ratemaking; rather, it has held that the principle does not apply to fuel cost adjustment clauses. We believe this analysis incorrect for the reasons we have stated, and which perhaps have been most thoroughly considered and articulated by the D.C. Circuit in *Public Service Company of New Hampshire*, *supra*. Moreover, we believe the question presented by these cases, which stem from problems associated with transitions from one type of adjustment clause to another, is unlikely to recur. Utilities are much more experienced and sophisticated in

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[16] *Virginia Electric and Power supra*, involved a transition from a fuel adjustment clause permitting collection of fuel costs on a three-month basis with a two-month lag, to a monthly adjustment factor based on fuel costs for the second month preceding the billing month, with a subsequent adjustment for any differences between actual fuel costs and the monthly adjustment factor. In addition, the utility sought to impose a surcharge to be collected over 24 months in order to recapture actual fuel costs incurred during the prior billing period.

Public Service Company of New Hampshire, *supra*, involved five Commission decisions rejecting similar surcharges. See note 8, *supra*, page 7. The *Virginia Electric and Power* decision notes but does not discuss the First Circuit's ruling. *Public Service Company of New Hampshire* fully explains the reasons for its disagreement with the First Circuit, holding that the rule against retroactive ratemaking applies with the same force to fuel cost adjustment clauses in tariffs as it does to other rate provisions. Slip op. 25-36.

designing fuel cost adjustment clauses than they were when such provisions were first introduced. They have learned to write their clauses in the expectation that fuel costs will continue to rise, and to design them so that they more closely and contemporaneously match revenues recovered to the rising fuel costs actually incurred (see, *e.g.*, note 16, *supra*, page 13). The decisions of the District of Columbia, Third and Fourth Circuits provide an additional incentive for them to pursue this careful course. Thus, while there may be some further litigation over the transition issue, its significance to administration of the Federal Power Act appears to be limited.

Subsequent experience may prove our assessment in this respect to be erroneous. Automatic adjustment clauses, which permit the passing on to consumers of costs without a preliminary review by regulatory agencies involve substantial public interest and concern. See, *e.g.*, Section 115(e) of the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3126.[17] Nevertheless, the instant case does not now appear to present any issue arising under the Federal Power Act as applied to these clauses that merits the Court's urgent attention.

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[17]Two state supreme courts construing state public utility statutes that do not permit retroactive ratemaking have reached conflicting results with respect to fuel cost adjustment clauses. Compare *State of North Carolina ex. rel. Utilities Commission and Duke Power Company* v. *Edminsten*, 291 N.C. 451, 232 S.E. 2d 184 (1977), with *Southern California Edison Co.* v. *Public Utilities Commission*, 20 Cal. 3d 813, 576 P. 2d 945, 144 Cal. Rptr. 905 (1978).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY 1979

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APPENDIX

Jersey Central Power & Light Company
FPC Electric Tariff
Original Volume No. 1

First Revised Sheet No. 15
Superseding Original
Sheet No. 15

ACCEPTED FOR FILING
TO BECOME EFFECTIVE
12-2-73

RESALE POWER SERVICE FOSSIL FUEL COST ADJUSTMENT CLAUSE

A fossil fuel cost adjustment factor shall be applied to each kilowatt-hour supplied under this tariff. This fuel cost adjustment determined to the nearest one-thousandth of 1 mill per kilowatt-hour in accordance with the formula set forth below, shall be applied to all kilowatt-hours supplied during the billing month.

$$A = \left(\frac{Fc}{Gc} - \frac{Fb}{Gb}\right) \times Gc \times Sc \times \frac{1}{1 - T}$$

Where A = Adjustment factor in mills per kilowatt-hour to be supplied to each kilowatt-hour applied under this tariff.

F = The cost of fossil fuel determined as the sum of Accounts 501 and 547 (less handling costs) in the current (c) and base (b) periods.

G = Net kWh generation by fossil fuels in the current (c) and base (b) periods.

S = Sales shall be all kWh's sold excluding inter-system sales in the current (c) period.

$\frac{Fb}{Gb}$ = Base fossil fuel cost (less handling costs) of 7.462 mills per kilowatt-hour.

T = The applicable New Jersey gross receipts tax, franchise tax, and surtax effective rate.

The "Fc", "Gc" and "Sc" factors are to be determined as the three month totals for the period ending with the second calendar month preceding the billing month.

The "T" factor is to be determined for the billing month.

Minimum bills shall not be reduced by reason of this fuel cost adjustment clause. This clause shall be applied to all kilowatt-hours supplied, and such charge shall be an addition to any minimums applicable.

Jersey Central Power & Light Company
FPC Electric Tariff
Original Volume No. 1

Third Revised Sheet No. 15
Superseding Second Revised
Sheet No. 15

RESALE POWER SERVICE
FUEL COST ADJUSTMENT CLAUSE

A fuel cost adjustment factor shall be applied to each kilowatthour supplied under this tariff. This fuel cost adjustment determined to the nearest one-thousandth of 1 mill per kilowatthour in accordance with the formula set forth below, shall be applied to all kilowatthours supplied during the billing month.

$$A = \left(\frac{Fc}{Sc} - \frac{Fb}{Sb}\right) \times L \times \frac{1}{1 - T}$$

Where A = Adjustment factor in mills per kilowatthour to be applied to each kilowatthour supplied under this tariff.

F = The cost of fossil and nuclear fuel, purchased power and net interchange determined as the sum of Accounts 501 and 547 (less handling costs), the cost of Account 518, the identifiable fuel costs of purchased power and the energy related costs of interchange purchased on an economic dispatch basis less the cost of fossil and nuclear fuel recovered through inter-system sales including the fuel costs rered through interchange sold on an economic dispatch basis.

S = Sales shall be all kWh's sold in the current (c) and base (b) periods.